



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of:

[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWK/170371

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 24, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services ["County"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on January 12, 2016.

The issue for determination is whether, under the Children's Long-Term Support Medicaid Home and Community-Based Services Waiver program ["CLTS"], it was correct to reduce petitioner's out-of-home paid respite care from 56 days per year to 15 days per year.

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] (not present at January 12,  
2016 Hearing)  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Represented by:

[REDACTED], petitioner's father  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

BY: [REDACTED], Assistant Corporation Counsel  
Portage County Department of Human Services  
817 Whiting Avenue  
Stevens Point, WI 54481-5292

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED] 15 years old) is a resident of Portage County, Wisconsin.
2. Petitioner's biological parents are divorced and she resides primarily with her father. Exhibit B.
3. Prior to November 2015 CLTS paid for 56 days per year of out-of-home paid respite care at [REDACTED] at a cost of \$153 per day. Exhibit B.
4. Petitioner's biological mother is willing to provide respite care at no cost the majority of the time when petitioner's biological father needs it. Exhibit B.
5. By a letter dated October 28, 2015 the County informed petitioner that effective November 10, 2015 her CLTS out-of-home paid respite care would be reduced to 15 days per year. Exhibit A.

### DISCUSSION

CLTS is run according to the terms of waivers that were granted to the State of Wisconsin by the United States federal government. The waivers allow the State of Wisconsin to operate CLTS without following all of the rules that normally apply to Medical Assistance ["MA"]. Wis. Stat. §§ 46.27(11) (2013-14); See also, 42 C.F.R. §§ 435.217, 440.180 & 441.300 et. seq. (2015).

CLTS is a source of funding for long-term support for those who would otherwise face institutional care. CLTS serves children and persons under the age of 22 who have a developmental disability, physical disability, and those who have a severe emotional disturbance. *Medicaid Home & Community-Based Services Waivers Manual* ["MW Manual"] § 2.02.D (January 2010). The purpose of CLTS is to provide funding for the option of community integration to people who are otherwise eligible for MA funded institutional care. MW Manual §§ 1.01, 2.01.2 & 2.07.D. (January 2010). CLTS must seek the most cost effective means to meet individual outcomes in an integrated community setting. MW Manual § 1.01. Clearly, it is more cost-effective to have petitioner's mother provide respite care at no cost than to pay [REDACTED] \$153 per day for such care.

Petitioner's father argues that petitioner's mother is "not dependable" -- but there is little in the record of this matter to support that argument (the evidence is that petitioner's mother cancelled respite only 1 time in a year due to being ill and that she offered to make it up the very next weekend). Exhibits A & B. Her father also argues that the 18-year-old son of the mother's boyfriend lives with petitioner's mother and her boyfriend and has a misdemeanor conviction for sexual relations with a 16 to 18 year old. However, there is no documentation in the record of this matter of such a conviction or, specifically, what the conviction was for. Moreover, the evidence in the record of this matter is that the boyfriend's son no longer lives with petitioner's mother and that there is a Circuit Court Order requiring weekend visits for petitioner and her mother. Finally, petitioner's father argues that petitioner's mother has neglected petitioner -- but there is nothing in the record of this matter to support that argument.

### CONCLUSIONS OF LAW

For the reasons discussed above, it was correct to reduce petitioner's CLTS out-of-home paid respite care from 56 days per year to 15 days per year.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 1st day of February, 2016

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\sSean P. Maloney  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 1, 2016.

Portage County Department of Human Services  
Bureau of Long-Term Support